Bryce Corporation *and* UBC, Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner. Case 26-RC-6449

May 28, 1982

DECISION AND ORDER REMANDING FOR HEARING

The National Labor Relations Board has considered objections to an election held on October 8 and 9, 1981,[1] and the Regional Director's report recommending disposition of same. The Regional Director recommended, *inter alia*, that the Board sustain Petitioner's Objection 4, and order a second election. He further recommended that, if the Board did not adopt the foregoing recommendation, the case be remanded for the purpose of a hearing on the remaining allegations advanced in Petitioner's Objections 1-5.[2] The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Regional Director's findings and recommendations,[3] except that it finds that Petitioner's Objection 4 raises substantial and material issues of fact which can best be resolved by a hearing.

Objection 4 is based on a statement contained in a notice to employees that the Employer posted on its bulletin board on August 27, 1981. The statement read as follows:

> If anybody causes you any trouble at your work or puts you under any sort of pressure to join a union, you should let your supervisor know, and we will see that this is stopped immediately. . . .

The Regional Director determined this statement to be objectionable, finding that such statements have the dual effect of encouraging employees to report the identities of card solicitors to their employers and discouraging card solicitors from pursuing protected organizational activities.

In its exceptions, the Employer contends that the statement found objectionable by the Regional Director was inconsequential in light of the surrounding circumstances, and does not warrant setting aside the election. Specifically, the Employer contends that the notice containing the statement was posted for only 2 working days, 5 weeks prior to the election, and viewed by a single employee in a unit of 44. The Employer further contends that it maintained strict neutrality throughout the election campaign, and its overall course of conduct nullified any possible coercive effect of the statement. We find that a hearing is necessary to determine the merits of these contentions.[4]

Accordingly, we shall order a hearing on the issues raised by Petitioner's Objections 1-5.

ORDER

It is hereby ordered that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence to resolve the issues raised by Petitioner's Objections 1-5.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said objections. Within the time prescribed by the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on each of the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the hearing officer.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, remanded to the Regional Director for Region 26 for the purpose of conducting such hearing, and that the said Regional Director be, and he hereby is, authorized to issue notice thereof.

MEMBERS FANNING and JENKINS, dissenting:

We would adopt the Regional Director's report and direct a second election based on his sustaining Petitioner's Objection 4. It is undisputed that, prior to the election, the Employer posted a notice which contained the following statement:

> If anybody causes you any trouble at your work or puts you under any sort of pressure to join a union, you should let your supervisor know, and we will see that this is stopped immediately. Neither you nor I will be intimidated.

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 17 for and 27 against the Petitioner. There were no challenged ballots.

[2] No exception was taken to this recommendation.

[3] In the absence of exceptions thereto, we adopt, *pro forma*, the Regional Director's recommendation that Petitioner's Objection 6 be overruled.

[4] Member Zimmerman, who participated in *Bil-Mar Foods of Ohio, Inc.*, 255 NLRB 1254 (1981), does not subscribe to the view that that decision requires setting aside an election based on an employer's statement of the kind in issue in Objection 4, without regard to consideration of the surrounding circumstances. He does not believe that the principle of that case constitutes a *per se* rule for finding objectionable conduct. In this regard, he notes that the Board does not hold that every instance of putative 8(a)(1) conduct requires setting an election aside. See, e.g., *The Swingline Company; Spotnails, Inc.*, 256 NLRB 704 (1981), and cases cited in fn. 63 of the Administrative Law Judge's Decision. Accordingly, he joins in remanding this objection for hearing.

The Regional Director properly applied clear Board precedent[5] and found that such broadly worded instructions constituted objectionable conduct in that it encourages employees to report union card solicitations and also discourages card solicitors in their protected organizational activities.

The majority, however, ignores the Regional Director's proper application of the law and says that a hearing is necessary to determi[illegible] of the Employer's contentions that th[illegible]ble statement had little or no impact o[illegible]on. Assuming all the Employer's conten[illegible]ue, there exist no issues of fact other tha[illegible]ve reactions of employees, which of course may not be considered. The Regional Director's decision is clearly correct and the majority's action serves only to delay and frustrate employee organizational rights. We dissent.

[5] See *J. H. Block & Co., Inc.*, 247 NLRB 262 (1980); *Bil-Mar Foods of Ohio, Inc.*, 255 NLRB 1254 (1981).